



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LNO/167210

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a telephone hearing was held on September 01, 2015. A hearing originally scheduled for August 4, 2015, was rescheduled at petitioner's request.

The issue for determination is the county agency correctly seeks a warrant directing the clerk of courts to place the petitioner's name in the judgment and lien docket.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was sent a child care overpayment notice, dated February 7, 2014. It indicated that Petitioner had been overissued child care benefits in the amount of \$12747.00 during the period from February 10, 2013 through June 30, 2013 (claim # [REDACTED]). The notice contained appeal instructions and noted the appeal deadline to 45 days from the date of the notice.
3. Petitioner's household is a 2 parent household. Petitioner worked, as did Petitioner's spouse but, on January 29, 2013, Petitioner's spouse reported that she had stopped working as of January 28, 2013. The agency failed to end Petitioner's eligibility and authorization. Petitioner's child care provider continued to bill the Wisconsin Shares Child Care program.
4. Petitioner's spouse appealed the overpayment determination on April 3, 2014. A hearing was held and petitioner's appeal was dismissed because she failed to file her appeal timely (see, Division of Hearings and Appeals Case no. CCO/156536).
5. The respondent notified the petitioner on June 20, 2015, that it had docketed a warrant to collect the balance of the Child Care overpayment.
6. Petitioner appealed the warrant action on July 10, 2015.

DISCUSSION

When a person fails to repay a debt for public assistance, and any appeal rights concerning that debt has passed, the county agency may seek a warrant that directs the clerk of courts to place the person's name in the judgment and lien docket. The amount of the judgment and lien equals the amount still owed on the overpayment of benefits. Wis. Stat. § 49.195(3m) and Wis. Adm. Code, § DCF 101.23(9). Because this process occurs after the time for any underlying appeal has passed, the person can only challenge whether the agency has correctly identified him and whether he has been given proper credit for all payments made against the debt.

Petitioner was notified of the overpayment in February, 2014, and that was appealed on April 3, 2014. An appeal of a negative action concerning child care benefits must be filed within 45 days of the action, and the notice informed the recipients of that deadline. Wis. Adm. Code, §HA 3.05(3). Because petitioner did not appeal timely following receipt of the February notice, he cannot appeal the merits of the overpayment now.

The Division of Hearings and Appeals has long and consistently held that it lacks the equitable powers needed to consider the fairness of a situation. Therefore, I cannot rule on whether it is fair for the county agency to continue to attempt to recover the overpaid monies that the petitioner received. Petitioner does not contest that he was correctly identified, nor that he has not repaid the debt. Under these circumstances, the law requires me to grant the agency's request for a warrant directing the clerk of court to place his name in the judgment and lien docket.

CONCLUSIONS OF LAW

The county agency correctly seeks a warrant directing the clerk of courts to place the petitioner's name in the judgment and lien docket because he has failed to repay an established overpayment in the amount of \$11,348.58.

THEREFORE, it is

ORDERED

That the petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of October, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 29, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit